IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 6TH OCTOBER 2006 / 14TH ASWINA 1928

WP(C).No. 28321 of 2003(V)

PETITIONER:

THE LIC OF INDIA, STAFF CO-OPERATIVE BANK LTD.NO.3314, JEEVAN PRAKASH, PATTOM, THIRUVANANTHAPURAM - 4, REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.BOBY MATHEW
SRI.HARIPPAD K.R.C.PILLAI

RESPONDENTS:

1.STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT, CO-OPERATION (C) DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2.REGISTRAR OF CO.OPERATIVE SOCIETIES, O/O THE REGISTRAR OF CO.OPERATIVE SOCIETIES, THIRUVANANTHAPURAM - 695 001.

3.MR.N.KRISHNAN, T.C.NO.7/184, 'NARAYANA SADANAM', KANJIRAMPARA P.O., THIRUVANANTHAPURAM - 695 001.

4.MR.P.CHANDRA MOHAN NAIR, T.C.NO.7/1405, 'SREE PRIYA', KATTACHAL ROAD, THIRUMALA, THIRUVANANTHAPURAM - 695 006

R4 BY ADV. SRI.V.RAJESH
R3 BY SR. ADV.SRI.V.N.ACHUTHA KURUP
SRI.BINDU SREEKUMAR
SRI.K.G.RENGANATH
R1-R2 BY GOVT. PLEADER MR.K.J.MOHAMMED ANSAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/10/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

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W.P.(C)No.28321 of 2003

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Dated: 6th October, 2006

JUDGMENT

The L.I.C. of India Staff Co-operative Bank Limited which was the petitioner in W.P.C.No.40155 of 2003 already disposed of by me by a separate judgment is the petitioner in this case. Respondent No.3 is N.Krishnan who was the additional 2nd respondent in W.P.C.No.40155 of 2003. Respondent No.4 is one P.Chandra Mohan Nair while respondents 1 and 2 respectively are the State and the Registrar of Co-operative Societies. The case of the petitioner is that respondents 3 and 4 are former employees of the petitioner-Bank. While the 3rd respondent entered service as a Junior Clerk on 24.6.1968, the 4th respondent was appointed as a Manager on 29.6.1976 under direct recruitment. The third respondent challenged the direct recruitment of the 4th respondent claiming promotion to the post of Manager. This court as per Ext.P1 judgment negatived the claim of the third respondent finding that the direct recruitment of the 4th respondent is valid. Subsequently the third respondent raking up the same issue claimed higher grade. The Registrar as well as the Government as per Exts.P6 and P7 rejected that claim. The third respondent has preferred O.P.No.10022/02 challenging Exts.P6 and P7 orders and it is stated that the O.P. is pending consideration. The

third respondent preferred Ext.P8 petition before the 2nd respondent claiming higher pay fixation and benefits on the ground that he is senior to the 4th respondent. It is pointed out that as a matter of fact while the third respondent was promoted as Assistant Secretary in the cadre of Manager only on 22.1.1980, the 4th respondent had all along been continuing as Manager right from 29.6.1976- the very date of his appointment. Therefore, according to the petitioner, the 4th respondent was definitely senior to the third respondent. The petitioner's grievance is that the Registrar as per Ext.P11 order allowed the claim of the third respondent holding that the direct recruitment of the 4th respondent was irregular and that the petitioner-Bank is an Urban Co-operative Bank(Special Grade). According to the petitioner, in reality the petitioner-Bank is not an Urban Co-operative Bank(Special Grade). The Registrar has passed ; Ext.P11 on several illegal premises and directed that the pay of the third respondent be fixed considering him to be senior to the 4th respondent and the benefits thereon be paid to him. It is also held as per Ext.P11 that the 4th respondent was not entitled to the benefits derived by him in the post of Manager. Though Ext.P12 appeal was preferred by the Bank challenging Ext.P11 before the Government,

the Government has dismissed Ext.P12 by passing Ext.P14 order. The Writ Petition has been filed impugning Exts.P11 and P14 on various grounds.

2. Detailed counter affidavits have been filed in this case by the 2nd respondent- Registrar and also by the third respondent. Through his counter affidavit the 2nd respondent justifies Exts.P11 and P14. It is contended therein that Ext.P11 order is issued after judicious consideration on all available records in the case. The statutory powers vested with the Registrar as per the Kerala Co-operative Societies Act and Rules have been exercised meticulously and impartially. The counter affidavit details the grounds raised by the petitioner one by one and refutes them. Neither Ext.P11 nor Ext.P14 is liable to be interfered with at all. The attitude of the petitioner-Bank towards the third respondent was biased and prejudicial. The second respondent-Registrar was therefore entitled to intervene and has intervened on just reasons.

3. The third respondent through his counter affidavit produces Exts.R3(a), Office Order No.3/73 of the petitioner-Bank to contend that the pay scales and allowances as applicable to the Co-operative Urban Banks have been implemented in the petitioner-Bank. On this

basis it is contended that the petitioner-Bank is an Urban Co-operative Bank and the staff pattern followed by the Urban Co-operative Bank is applicable in this Bank. It is then contended that the petitioner-Bank has been reclassified during different times in accordance with the norms fixed for Urban Co-operative Banks and it has reached the qualification as special grade Urban Co-operative Bank in 1991. The contention that the post of Assistant Secretary is the same cadre of the Manager and Chief Accountant is denied. The post of Assistant Secretary is feeder category for promotion as Secretary as per Appendix III. The Bank even though had been favouring the Manager with the same pay scale, the same will not show that the post of Manager was equivalent to the post of Assistant Secretary. The 4th respondent entered service as temporary Junior Clerk on 20.5.1972. Ext.R3(b) is the copy of the order dated 29.6.1976 of the Bank evidencing the same. It is contended that the appointment of the 4th respondent as Manager was totally irregular as no sanction for any such post was obtained and the post was not one coming within the approved staff pattern. The third respondent was promoted as Assistant Secretary on 22.1.1980 and not to any cluster of post as Chief Accountant/Manager etc. The third respondent

became senior to the 4th respondent on his appointment as Assistant Secretary. It is further contended that the pay scales in respect of Urban Co-operative Banks have been revised with effect from 1.4.1993 as per G.O.(P)No.28/95/Co.op. dated 28.2.1995. Annexure I contained item No.7 as Assistant Secretary/Manager/Chief Accountant/Cashier having a revised scale starting from 1585-3315. The above being an anomaly, this was rectified by G.O.(P) No.88/96/Co.op. dated 10.7.1996. The true copy of the G.O.(P) No.88/96/Co.op. dated 10.7.1996 is produced along with the counter affidavit as Ext.R3(c). Under Ext.R3(c) the post of Manager was taken away and redesignatred as Branch Manager. In Special Grade Urban Banks the Assistant Secretary has been granted a pay scale starting from 1915-3740. In fact the same is in tune with the revised norms prescribed by the Government for class-I, Special Grade Urban Banks with effect from 16.9.1993 in G.O.(P)No.91/93. In thatl the post of Manager was omitted and in its place the post of Branch Manager was included among the cluster of posts. The 4th respondent therefore is only a Branch Manager and he could not have continued with the designation as Manager and the same was unauthorised and illegal. The Bank had not obtained any permission from the Registrar or from

the Government to continue the post of Manager. In spite of that the Bank granted higher grade benefits to him to boost his salary whereas the third respondent was not granted pay fixation benefits as ordered in the pay revision orders issued by the Government. The third respondent points out that as per Ext.R3(d) Government Order dated 25.1.2000 the pay scale was again revised with effect from 1.4.1998. In Ext.R3(d) also item No.7 in Annexure-I is the revised scale of pay granted to the Assistant Secretary and there was no post of Manager. But again the Bank arbitrarily and wrongly granted an unmerited benefit by granting a scale of pay of the Secretary starting from Rs.5775/- to the 4th respondent. The third respondent had been complaining about the denial of benefits of pay revision to him. The third respondent was not granted any higher grade benefits in spite of the same being granted to the 4th respondent. Ext.R3(e) is one of such representations. Denying the averments in paragraph 10 of the Writ Petition, the third respondent submits that he has not committed any misconduct warranting any disciplinary action. It was to harass him that he was divested of the assigned duties and functions as to attend to chitties allotted to Junior Clerk Retnamani and Accountant Radhamani. The third respondent filed a representation against this

action. Then the Secretary started harassing him further by issuing successive memos. The third respondent complained to the Registrar on noticing that the Bank was proceeded to take unilateral action. The Registrar by the order dated 23.12.1998 directed the Bank that the office orders be reviewed and fresh orders should be issued keeping in view of the position held by the third respondent in the Bank. Ext.R3(f) is the order issued by the Registrar dated 23.12.1998. Ext.R3(f) was not implemented by the Bank. Following Ext.R3(f) a re-allotment was made repeating the earlier mistake. The Registrar stayed this re-allotment on a representation submitted by the third respondent. The third respondent by filing O.P.No.8244 of 1999 only could get relief by way of interim order whereby it was directed that final orders will be passed only subject to further orders passed by this court. Ext.R3(g) is copy of the order passed by this court. Again when charge memo was issued to the third respondent, this court passed an order in C.M.P.No.11542 of 2000 that final orders passed on the basis of Ext.P17 charge memo will not be implemented without permission of the court. Ext.R3(h) is the copy of that order. The third respondent then submits that meanwhile his genuine demands to grant higher grade benefits was rejected by

Ext.P6 which was subsequently affirmed by Ext.P7 and the same is under challenge in O.P.No.10022 of 2002. The denial of pay revision benefits was an issue which was left open in O.P.No.8244 of 1999. The attempt of the petitioner-Bank to cling on Exts.P6 and P7 to deny the due pay fixation to the third respondent is perse illegal. This is why Ext.R3(i) detailed representation was submitted by the third respondent before the Registrar. It is after considering Ext.R3(i) that the Registrar passed Ext.P11 order. Before the Government the counsel for the third respondent submitted a detailed argument notes. Ext.R3(j) is copy of the argument notes submitted by the third respondent. The Government also considered Ext.R3(j) and passed Ext.P14 order. The counter affidavit proceeds to deny all the averments in the Writ Petition and to refute all the grounds raised therein. The counter affidavit also points out that the Bank had been denying the eligibility for getting monthly pension to the third respondent. As The order of the Pension Board dated 1.8.2002 directing the Bank to pay an amount of Rs.53,994/- as arrears is produced as Ext.R3(k). The amounts in Ext.R3(k) has not been so far paid and therefore the third respondent is denied his pensionary benefits. The third respondent has also produced Ext.R3(l) which is

copy of the subsequent letter dated 21.10.2002 issued by the Pension Board requesting the Bank to rectify some defects notified by the Verification Officer.

4. I have heard the submissions of Mr.Boby Mathew, learned counsel for the petitioner, Mr.V.N.Achutha Kurup, Senior Advocate, on behalf of the third respondent and Mr.V.Rajesh, counsel for the 4th respondent. Significantly the 4th respondent has not filed any counter affidavit in this case. I have also heard the submissions Mr.K.J.Mohammed Ansar, learned Government Pleader who would support Exts.P11 and P14.

5. Having regard to the rival submissions made at the bar and having examined the rival contentions in the light of the various documents placed on record and the relevant rules, I am of the view that there is absolutely no warrant for interfering with Exts.P11 and P14 orders. I uphold Exts.P11 and P14.

6. I have today disposed of another Writ Petition, W.P.C.No.40155/03 filed by the petitioner-Bank by directing a reconsideration by the first respondent therein (the Kerala State Co-operative Employees' Pension Board) of all the objections filed by the petitioner-Bank to a demand for remittance of amounts by way of

contribution to the pension fund of the third respondent. One of the conditions imposed by me therein is that the monetary benefits due to the third respondent under Exts.P11 and P14 in this case shall be paid to the third respondent. The benefits due to the third respondent under Exts.P11 and P14 are liable to be released to the third respondent without fail. I reiterate that direction.

The Writ Petition will stand dismissed. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**